

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Application by Qwest Communications</b>	)	
<b>International, Inc., for Provision</b>	)	
<b>Of In-Region, InterLATA</b>	)	<b>WC Docket No. 02-148</b>
<b>Services in Colorado, Idaho, Iowa,</b>	)	
<b>Nebraska and North Dakota</b>	)	

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**REPLY COMMENTS OF THE  
COLORADO PUBLIC UTILITIES COMMISSION**

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## EXECUTIVE SUMMARY

In its evaluation filed July 2, 2002, the Colorado Public Utilities Commission (COPUC) recommended that Qwest Communications International, Inc. (Qwest) be permitted to enter the interLATA market in Colorado. Following an exhaustive and rigorous two and one-half year evaluation, we concluded that Qwest meets the requirements of § 271(c) of the Telecommunications Act of 1996 (Act), warranting a grant of in-region interLATA authority. Review of the other parties' comments has not changed that conclusion, and we reiterate it here.

The commentators raise numerous and, to a large degree, overlapping objections. We considered most of these objections in the Colorado record and concluded that Qwest met the requirements of § 271 in any event. Other objections relate to alleged problems with other states in the application. We do not address those. Still other objections were either not raised or controverted in the Colorado record. We urge the Commission not to countenance these untimely objections.

The COPUC has received and reviewed comments filed by 13 commentators<sup>1</sup>: AT&T Corp. (AT&T); the Communications Workers of America; the Competitive Telecommunications Association (CompTel); Covad Communications Company (Covad); Eschelon Telecom, Inc. (Eschelon); Integra Telecom of North Dakota, Inc.

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<sup>1</sup> In addition to the formal comments, there are numerous *ex parte* filings, some of which contain information and data used to support various contentions or to address perceived shortcomings in the factual record, or both. See, e.g., *DOJ Evaluation* at pages 17, 18, 25, and 26 (discussion of *ex parte* filings). The factual record in Colorado was developed over several years and closed at the end of the COPUC *en banc* workshop held June 10-12, 2002. The COPUC has not considered information and data provided since the filing of Qwest's application because they were not reviewed or subjected to critical examination in a COPUC proceeding. As a result, this reply does not rely upon information or data not offered in its § 271 proceedings.

(Integra); New Edge Network, Inc. (New Edge); OneEighty Communications, Inc. (OneEighty); Arizona Payphone Association *et al.* (Payphone Associations); Sprint Communications Company L.P. (Sprint); Touch America, Inc. (Touch America); Vanion, Inc. (Vanion); and WorldCom, Inc. (WorldCom). In addition, the COPUC has received and reviewed the Evaluation filed by the U.S. Department of Justice on July 23, 2002.

The Qwest application requests authority to provide in-region interLATA service in five states: Colorado, Idaho, Iowa, Nebraska, and North Dakota. Given the breadth of the application, one would expect the comments to raise issues either that are inapplicable in every state or that were not raised in every state's § 271 proceeding. That is the case here. As a result, this reply proceeds as follows: First, we identify the comments that are not applicable to Colorado; second, we identify the issues that were not raised during the § 271 proceedings in Colorado; third, we identify the checklist and other items that were not addressed in any comment; and, finally, we respond to the comments that remain.

#### COMMENTS THAT ARE NOT APPLICABLE TO COLORADO

Many of the comments state explicitly that they do not apply to the Colorado portion of Qwest's application. These are discussed in this section.

The AT&T comments cover a wide range of topics that do not apply to Colorado, in the main because AT&T seeks to have other states adopt the results in Colorado. The AT&T comments that do not apply to Colorado are: Qwest's benchmarking the rates for Unbundled Network Elements (UNEs) to Colorado rates (comments at pages 51-59); the analysis of residential entry potential (*id.* at pages 70-71); the prohibition against placing

interconnection traffic on interLATA trunks (*id.* at pages 79-80); the refusal to construct new facilities for Competitive Local Exchange Carriers (CLECs) when Qwest would construct for its retail customers (*id.* at pages 82-84); access to the network elements owned by Qwest's affiliates (*id.* at pages 85-88); unbundled transport issues (*id.* at pages 99-102); ; and the AT&T assertion that UNE rates preclude facilities-based competitive entry in Idaho, Iowa, and North Dakota (*id.* at pages 137-141). AT&T argues that all states within Qwest's region should adopt the provisions of the Colorado Statement of Generally Available Terms and Conditions (SGAT) that permit placing interconnection traffic on interLATA trunks (*id.* at page 80), that require Qwest to construct facilities for CLECs if it would construct facilities for its retail customers (*id.* at page 83), that permit access to the network elements owned by Qwest Corporation's affiliates (*id.* at page 85), and that eliminate the distinction between Unbundled Dedicated Interoffice Transport (UDIT) and Extended Unbundled Dedicated Interoffice Transport (E-UDIT) (*id.* at page 99).

Covad discusses, and objects to, the Qwest build policy (comments at pages 34-35). The crux of the objection is that the policy is discriminatory because Qwest states it will always bill its wholesale customers for the construction job. To the extent Qwest would not bill its retail customers for the construction job, it should not be permitted to bill its wholesale customers. Section 9.19 of the Colorado SGAT provides that Qwest is not authorized to bill CLECs when not allowed for in a tariff or when such charges would not be applied to an end user customer. The Colorado SGAT already addresses Covad's concern.

The Integra comments deal exclusively with the UNE loop rates in North Dakota. The comments are not applicable to the Colorado application.<sup>2</sup>

New Edge discusses the pricing of the various types of Quote Preparation Fees (QPF) (comments at pages 5-8) and the rates for UDIT (*id.* at pages 8-9), objecting to both. New Edge does not dispute the Colorado QPF. Indeed, New Edge cites the Colorado QPF as “form[ing] a good basis to determine whether or not Qwest’s collocation rates in the other states are just and reasonable.” *Id.* at page 6. With respect to UDIT rates, New Edge questions the Idaho and Iowa rates, not those in Colorado.

The Payphone Associations’ comments are wholly inapplicable to Colorado. The comments address the wholesale pricing of Public Access Lines (PAL) and Qwest’s asserted failure to comply with the Commission’s *New Services Order*. As stated in footnote 9 on page 4 of the Payphone Associations’ comments, on June 14, 2002, Qwest filed Advice Letter No. 2922, proposing new Colorado intrastate payphone service offerings and rates. The COPUC allowed the rates to become effective by operation of law on July 15, 2002. This filing was prompted by, and was intended to meet the requirements of, the *New Services Order*. In that order, this Commission reiterated that it would not impose on payphone line services the §§ 251 and 252 pricing regime for local interconnection services.<sup>3</sup>

Further, the FCC stated that it agreed with the Bureau that UNE overhead loadings were the best “comparable services” with which to justify overhead allocations

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<sup>2</sup> For the Commission’s information, the COPUC notes that the Colorado UNE rates used in Integra’s analysis are not correct because they are the rates from COPUC Docket No. 96S-331T, the first wholesale rate proceeding. The current and correct rates are found in Qwest’s Colorado SGAT, Exhibit A (*Qwest Application*, App. B, Vol. 1, Tab 2) and were derived in the most recent Colorado wholesale rate proceeding, Docket No. 99A-577T.

<sup>3</sup> *New Services Order*, ¶ 50.

and loading factors.<sup>4</sup> Therefore, the rates for payphone line services on file in Colorado contain only the same overhead allocations and loading factors as other UNE rates. It follows that there are no excess “retail” costs in the Colorado Qwest payphone line service rates that must be removed. The effective Colorado Qwest payphone line service rates are now wholesale rates and are not retail rates; and, thus, no wholesale discount should be applied.

WorldCom comments on Qwest’s use of Colorado rates for benchmarking in the other states (pages 28-31). These remarks are not applicable to Colorado.

#### ISSUES NOT RAISED IN COLORADO SECTION 271 PROCEEDINGS

From the beginning of the § 271 process this Commission advised participants to bring up all issues and concerns in the relevant state proceeding before raising them at this Commission.<sup>5</sup> The COPUC required the same in its § 271 proceedings.<sup>6</sup> In addition, the COPUC admonished participants in its § 271 proceedings to raise Regional Oversight Committee (ROC) Operations Support Systems (OSS) test-related issues and concerns in the ROC OSS test arena before bringing them to the COPUC.<sup>7</sup> The purpose of these requirements is simple and self-evident: provide information and data in a timely manner to the appropriate body so it has a reasonable opportunity to assess and, as necessary, to address the identified issues.

Commenters did not raise the following issues in any of the four COPUC § 271-related proceedings. As a result, we had no opportunity to assess or to address them.

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<sup>4</sup> *Id.* at ¶¶ 51 and 52.

<sup>5</sup> *See, e.g., Ameritech Michigan Order*, ¶ 57 & n.124.

<sup>6</sup> *See, e.g., COPUC Procedural Order*, App. K, Vol. 1, Tab 148, at pages 26-27.

<sup>7</sup> *Id.* at pages 30-32.

Due to the absence of a record before us on these issues, we offer no comment on the issues or their potential impact on the pending application.

Nevertheless, we urge the Commission to consider these late-raised objections only to the extent extraordinary circumstances warrant. All parties were on notice of the need to raise objections first here in the state record. If they did not do that, we urge the Commission to refuse consideration of the objection for three reasons. First, the requirement to raise the issue before the state commission was one of the “rules of the game.” Second, had we the opportunity to develop the record on (and to consider the substance of) the objection, it could possibly have been dealt with satisfactorily here at the state level. Third, and finally, neither the FCC nor the COPUC wants to encourage a practice of withholding germane objections to an application until the severely time-constrained review at the Commission level.

The Department of Justice (DOJ) raises concerns about the electronic auditability of wholesale bills. *DOJ Evaluation* at pages 23-25.<sup>8</sup> No party raised this concern to the COPUC. Indeed, throughout multiple workshops, the ROC OSS test, and COPUC hearings, the issue of electronic auditability of wholesale bills never arose. The fact that this issue never arose should be telling as to its relative importance.

In their comments, AT&T (pages 107, 123-129), CompTel (pages 7-13), New Edge (pages 11-12), and Touch America (entire)<sup>9</sup> address alleged Qwest violations of § 271, including, *e.g.*, the premature offering of in-region interLATA services, the failure

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<sup>8</sup> See also WorldCom comments at pages 18-19.

<sup>9</sup> As discussed in the *Section 271 Compliance Order* at pages 41-42, Touch America raised its issues in the Colorado § 271 proceeding at the eleventh hour, fifty-ninth minute. The only information Touch America provided was a copy of its FCC complaint (File No. EB-02-MD-003) regarding infeasible rights of use. The COPUC did not rule on the merits, leaving the filed complaint to “proceed apace in the appropriate forum[.]” See also Touch America comments at page 1, n.1 (“Because the issues were first



to comply with FCC orders, and inappropriate dealings with affiliates. By vague assertions, these or similar issues were raised in the Colorado § 271 proceedings. Due to the lack of specificity in the record, the COPUC could address these issues only in the most general way.<sup>10</sup> Before this Commission, the commentators present and rely on additional evidence or data not in the record in Colorado. The COPUC, therefore, considers these comments not to have been presented in Colorado.

AT&T asserts that Qwest discriminates against CLECs by offering them only the “lowest quality ATM connection from the [Digital Subscriber Line Access Multiplexer (DSLAM)] to the CLEC equipment.” Comments at pages 98-99. This issue, and any necessary supporting data, were not presented in Colorado.

New Edge comments (pages 10-11) that Qwest is unwilling “to offer for resale at wholesale rate certain ATM and frame relay services purchased by New Edge for resale purposes.” New Edge did not present this issue in the Colorado § 271 proceedings.

Eschelon’s comments principally recite performance issues that it has with Qwest. There are explicit references to Eschelon’s commercial experiences in Colorado (*see, e.g.*, comments at pages 8, 9, 23). Eschelon did not present its commercial experiences and performance issues in Colorado despite having ample opportunity to do so. Since January of 2001, by its own admission, it has “provided Qwest a monthly ‘Report Card’ summarizing Eschelon’s experience with Qwest’s performance.” *Id.* at page 3.

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raised in Touch America’s complaints raised with the Commission ..., the state regulatory authorities found that the matters were better left to resolution by the Commission.”)

<sup>10</sup> See *Section 271 Compliance Order* at 42-46 (noting, *inter alia*, that Qwest provided assurances that it has settled the Colorado-specific CLEC complaints and that the occurrences which are alleged to have occurred in other jurisdictions should be addressed there).

Sprint comments that Qwest's access line data are inaccurate, at least in part, because they include Sprint data. Comments at pages 11-13. Sprint did not provide this information, or make this argument, in Colorado.

Vanion addresses Local Area Data Service quality (comments at pages 2-5) and reciprocal compensation (notably, a billing dispute) (*id.* at pages 8-9). Vanion raised neither issue in the Colorado record. In addition, Vanion complains that a CLEC cannot purchase a DSL-qualified loop as a 1FB. *Id.* at pages 7-8. This is a resale issue not presented in the Colorado proceedings.<sup>11</sup>

WorldCom claims that Qwest's Channel Facility Assignment information is inaccurate and, as a result, WorldCom orders are rejected. *Id.* at pages 25-26. In addition (*id.* at pages 2-3), WorldCom presents information about its commercial experience with Qwest. WorldCom failed to raise these points in Colorado.

WorldCom reports (*id.* at pages 34-37) that Qwest refuses to provide customized routing from its switch to the CLEC's Operator Services and Directory Assistance (OS/DA) platform and that this routing is necessary if a CLEC is to self-provision OS/DA services to its customers. WorldCom asserts that Qwest's failure to provide customized routing violates checklist items (ii) and (vii). WorldCom did not raise this

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<sup>11</sup> Notwithstanding our not having reviewed this issue in Colorado, COPUC notes that a 1FB (single party, flat rated business line) is a retail service providing basic local exchange service. Colorado has defined basic service in 4 *Code of Colorado Regulations* 723-2 at Rule 17. Focusing just on the relevant parts of the rule: Basic service is voice grade guaranteeing voice grade access and occurring "within the frequency range of approximately 300 Hertz and 3,000 Hertz, for a bandwidth or approximately 2,700 Hertz." This part of the COPUC rule is the same as this Commission's definition for Universal Service Fund purposes. This bandwidth is not suitable for DSL. If a CLEC wants enhanced channel performance over a resold 1FB, the CLEC may order from Qwest the additional conditioning at the tariffed rate.

particular issue in any of the workshops or hearings in Colorado relating to unbundled switching or directory assistance and operator services.<sup>12</sup>

Finally, both New Edge (comments at page 5) and AT&T (comments at pages 104-106) state that DSL service is not available for resale, although Qwest provides it to Microsoft Network, L.L.C. These claims are based on unfiled agreements that were not presented in Colorado.

#### CHECKLIST AND OTHER ITEMS NOT ADDRESSED IN ANY COMMENT WITH RESPECT TO COLORADO

Briefly, we recount the checklist items *not* commented upon by any party. Because of this silence, we urge the Commission to make a finding consistent with the COPUC's determination of § 271 compliance.

No commentator raised an issue about Qwest's compliance with Track A<sup>13</sup> with respect to the existence of approved and binding interconnection agreements.<sup>14</sup> No commentator addressing issues of concern in Colorado raised any issue with the following checklist items: checklist item 3 (access to poles, ducts, conduits, and rights of way); checklist item 5 (access to unbundled local transport), other than ROC OSS test-related issues; checklist item 8 (access to white pages directory listings); checklist item 9

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<sup>12</sup> However, WorldCom did attack the pricing of customized routing in the Colorado pricing proceeding (Docket No. 99A-577T), arguing that Qwest's Individual Case Basis (ICB) pricing for customized routing is not sufficient to ensure that the CLECs have the ability to direct DA/OS services in a competitive manner. The COPUC ruled against WorldCom, finding that Qwest's ICB pricing should "remain in effect until a standard priced customized routing offering is in place." *See Commission Order (Decision No. C01-1302), Qwest Application*, App. C., Vol. 2, Tab 10, at pages 106-07; *Ruling on Applications for RRR (Decision No. C02-409), Qwest Application*, App. C., Vol. 2, Tab 11 at pages 80-81.

<sup>13</sup> 47 U.S.C. § 271(c)(1)(A).

<sup>14</sup> Comments pertaining to CLEC service to residential customers are discussed *infra* in the public interest portion of this reply.

(numbering administration); checklist item 10 (access to databases and associated signaling); checklist item 12 (local dialing parity); and checklist item 13 (reciprocal compensation).

The Commission, therefore, should deem Qwest compliant with these items.

#### REPLY TO COMMENTS

#### **Checklist item (i) -- Interconnection in accordance with the requirements of §§ 251(c)(2) and 252 (d)(1)**

##### A. Trunking

##### 1. Comments

AT&T claims that Qwest provides inferior interconnection arrangements. Comments at pages 75-78, 80-81. It raises three concerns. First, AT&T argues that Qwest should not require a construction deposit for CLEC trunking orders when two conditions are met: CLEC trunk usage falls below 50 percent in the previous 18 months and a given percentage and CLEC forecasts of its trunking needs for the next quarter is higher than previous periods. Second, AT&T asserts that the Qwest policy of recovering trunks if CLEC usage falls below 50 percent is discriminatory. Third, AT&T claims that Qwest's limiting the length of interconnection trunks to 50 miles is arbitrary and discriminatory.

## 2. Response

None of these issues is new to the COPUC, which addressed them twice.<sup>15</sup> On the issue of the construction deposit, the hearing commissioner found that this requirement is reasonable.<sup>16</sup> Specifically, he determined that Qwest may collect a deposit from a CLEC when the CLEC's forecasts necessitate construction of new facilities *provided* the parties have established contractual liability (*i.e.*, have committed themselves to each other in a legally binding manner) with respect to the facilities.<sup>17</sup> The deposit serves as security against CLEC over-forecasting and allocates the risk of loss from over-forecasting on the requesting CLEC, which is the least cost provider of information concerning its trunking needs. In addition, there are two offerings available: a "forecasted" trunk offering (with the deposit requirement) and an "unforecasted" trunk offering (without the deposit requirement). Thus, a CLEC has the opportunity to forego forecasting and the deposit with the understanding that the CLEC must endure a longer time interval for provisioning and that the price charged likely will contain a premium to account for Qwest's risk of loss. The "forecasted" trunk offering with deposit requirement provides CLECs with what they want and need: time-definite deadlines for trunk build-out completion. CLECs should pay for this certainty.

The issue of Qwest's recovering underused trunks was sort of a tag-a-long to an impasse issue in Colorado Workshop 2 on interconnection. This issue is mentioned in the *COPUC Staff's Volume 2 Report* in the section on CLEC issues -- SGAT §

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<sup>15</sup> See generally *Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 10, at pages 26-28, 34-40, and 42-45; *Motion to Modify Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 16, at pages 4-6 and 16-17.

<sup>16</sup> See generally *Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 10, at pages 34-40; *Motion to Modify Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 16, at pages 4-6.

<sup>17</sup> The hearing commissioner also noted that, at its own risk, Qwest may forego the deposit in any circumstance it wishes.

7.2.2.8.13.<sup>18</sup> In summarizing the parties' positions, Staff noted that "Qwest does not agree to AT&T's proposed modification" to the SGAT. Although SGAT § 7.2.2.8.13 is cited as part of Impasse Issue No. 1-114, the entire contention, the discussion, and the briefs of the parties on this impasse issue were focused on the deposit requirements and *not* on Qwest's recovering underused trunk groups. Thus, this recovery issue was considered in Colorado to be an item that reached consensus, and the SGAT language was not modified.

Finally, relying on Commission precedents, the hearing commissioner viewed the issue of limiting the length of interconnection trunks to be an exercise in determining the distance which would represent a "reasonable accommodation of interconnection."<sup>19</sup> He found that the conditions in Colorado, coupled with Qwest's agreement to exchange local traffic at its access tandems, warranted limiting the length of interconnection trunks to avoid the situation in which Qwest would have to build interconnection trunks that span several hundred miles. Of course, the parties remain free to negotiate different terms.

## B. Interconnection

### 1. Comments

AT&T raises one issue: Qwest's SGAT imposes anticompetitive entrance facility charges on CLECs which obtain interconnection trunks from Qwest. AT&T argues that the issue is one of pricing because the charges do not reflect the way the costs are incurred. Comments at pages 74-76.

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<sup>18</sup> See generally *COPUC Staff's Volume 2 Report, Qwest Application*, App. K, Vol. 1, Tab 1127, at pages 50-51.

<sup>19</sup> See generally *Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 10, at pages 42-45; *Motion to Modify Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 16, at page 6.

## 2. Response

The COPUC dealt with this issue three times.<sup>20</sup> It considered -- and rejected -- AT&T's argument each time. In our view, the issue is whether Qwest must extend its network to accommodate a CLEC's requested point of interconnection. We found that Qwest need not extend its network to the requested point of interconnection. CLECs have another recourse; to the extent the SGAT terms are not satisfactory, a CLEC remains free to negotiate alternative terms with Qwest.

AT&T casts this issue as one of cost causation. The COPUC addressed this point when it observed that "[i]f the CLEC determines, as it can, the location of its [point of interconnection], the CLEC should bear the financial consequences that flow from that siting decision."<sup>21</sup>

Nothing presented requires a finding of lack of compliance with this checklist item.

### **Checklist item (ii) -- Nondiscriminatory access to network elements**

#### A. ISDN Digital Subscriber Line (ISDL) over Integrated Loop Carrier (IDLC)

##### 1. Comments

New Edge (comments at pages 4-5) and CompTel (comments at pages 4-7) state that Qwest has discriminated against CLECs by failing to notify them of a change that affects carriers' ability to provision ISDL service over loops with integrated pair gain (IPG) or IDLC. They assert that Qwest provided retail customers with ISDL over loops

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<sup>20</sup> See generally *Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 10, at pages 26-28; *Motion to Modify Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 16, at pages 2-3; *SGAT Compliance Order, Qwest Application*, App. C, Vol. 1, Tab 31, at pages 16-17.

with IPG after informing CLECs that IDSL was not available over loops with IPG and that CLEC orders would not be processed if submitted.

## 2. Response

The COPUC investigated this issue during its § 271 proceedings and took action to address this concern going-forward.<sup>22</sup> We required Qwest to amend Colorado SGAT § 9.2.2.3.2 (regarding digital capable loops); to amend the appropriate section of its PCAT (or product catalogue) by including Qwest's engineering decision tree for determining the best method for provisioning unbundled loops and by stating that this is the method used for both analog and digital loops; and to send to CLECs the appropriate change management notification when the PCAT change is completed. Qwest took the required actions.

We view our actions as sufficient to assure that CLECs understand both the availability of IDSL where IPG is present and the steps Qwest takes to provision these loops. We see nothing in the record in Colorado to indicate that Qwest will not comply in the future. Nonetheless, should it develop that Qwest does not comply, CLECs may apply to the COPUC or this Commission for appropriate relief.

### B. Qwest held order policy for wholesale orders

#### 1. Comments

When Qwest cannot fill a UNE order, the Colorado SGAT permits Qwest to hold the order for 30 days (to determine whether facilities become available) and then to cancel the order if capacity remains unavailable.<sup>23</sup> At this point, the CLEC must submit

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<sup>21</sup> *SGAT Compliance Order, Qwest Application*, App. C, Vol. 1, Tab 31, at page 17.

<sup>22</sup> *See Section 271 Compliance Order* at pages 18-24.

<sup>23</sup> *See Colorado SGAT* §§ 9.1.2.1.3 and 9.2.2.16. Covad mistakenly claims that the policy is not in the Colorado SGAT. Covad comments at page 35.



a request to build the requested UNE pursuant to Colorado SGAT § 9.19. Covad (comments at pages 35-38) and AT&T (comments at pages 84-85) assert that these provisions are discriminatory because Qwest does not treat the CLEC order as it would a comparable retail customer order<sup>24</sup> and because Qwest can supply better information to its customer concerning when facilities to provide the requested service are likely to be available.

## 2. Response

When the COPUC considered this issue, it found that the Qwest policy does not discriminate.<sup>25</sup> This decision was based on the Colorado SGAT language, commended by CLECs,<sup>26</sup> that Qwest must determine whether to build for CLECs in the same manner as it determines whether to build for itself; on the Colorado SGAT language that Qwest will notify CLECs of impending projects in excess of \$100,000; and on CLEC access to the loop qualification tools. If facilities are not available, the COPUC found -- and the CLECs offered -- no apparent reason why the CLEC order should be held.

### C. Interconnection of UNEs to finished services

#### 1. Comments

AT&T claims that the Colorado SGAT is “again blatantly discriminatory”<sup>27</sup> because Qwest can refuse to connect UNE combinations to finished services if the FCC or the COPUC expressly prohibit that connection. Comments at pages 88-90.

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<sup>24</sup> Retail customers have their unfilled orders placed in a queue to await the availability of facilities; CLECs have their order canceled and must submit another request.

<sup>25</sup> See generally *Volume 5A Order, Qwest Application*, App. C, Vol. 1, Tab 19, at pages 23-27.

<sup>26</sup> See, e.g., AT&T comments at page 83.

<sup>27</sup> Interestingly, this statement immediately follows a discussion in which AT&T extols the virtues of another Colorado SGAT provision and uses it as the standard to be adopted. Our reversal from regulatory-Solons to incompetent-monopolist-protectors is enough to cause whiplash.

## 2. Response

This is a wholly improbable contention and is emblematic of the baseless arguments that lace AT&T's comments. We find it appropriate that Qwest not connect UNEs to finished services in those instances in which this Commission or the COPUC expressly *forbids* such a connection.<sup>28</sup> The language simply encompasses future changes.

### D. Customer service calls and Qwest win-back efforts

#### 1. Comments

AT&T complains that it is inappropriate to permit Qwest to attempt to win-back (or regain) a CLEC customer if that customer mistakenly calls Qwest about service-related issues or maintenance and repair. Comments at pages 91-94.

#### 2. Response

This issue received considerable attention during the Colorado § 271 proceedings.<sup>29</sup> After careful consideration of the First Amendment precedents and implications, of the public interest in promoting competition through marketing efforts, and of the Act's purpose to open the market to *competition* rather than to *competitors*, the hearing commissioner determined that the restriction advocated by AT&T was inappropriate. It remains so.

Further, of course, the inadvertent marketing opportunities run both ways. AT&T is not prohibited from marketing to misdirected callers. As a matter of competition policy, we see no reason to prohibit Qwest from marketing to mistaken callers while allowing the practice for others.

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<sup>28</sup> See generally *Volume 4A Order, Qwest Application*, App. C, Vol. 1, Tab 7, at pages 20-22; *Motion to Modify Volume 4A Order, Qwest Application*, App. C, Vol. 1, Tab 16, at page 10.

E. Access to Network Interface Device in multiple tenant environments

1. Comments

AT&T objects (comments at pages 103-104) to Qwest's refusal to permit removal of its unused loops from the protector side of the Network Interface Device (NID) to make room for a CLEC to provide service to its customer. AT&T claims that this is a problem principally in the multiple tenant environment.

2. Response

AT&T brought this issue to the COPUC during workshop 5. This issue reached impasse and was decided in Qwest's favor.<sup>30</sup> The SGAT language was found to be satisfactory. Nothing presented by AT&T here changes that result.

F. Termination liability assessments

1. Comments

Vanion comments on Qwest's imposition of a termination liability assessment (TLA) when CLECs seek to convert retail facilities into wholesale facilities. Comments at pages 9-12. Vanion claims that it cannot convert its circuits, obtained from Qwest on a retail basis to provide internet access as an Internet Service Provider (ISP), to wholesale circuits, necessary now that Vanion is a CLEC, without paying a substantial TLA. As the TLA is a provision in its retail agreement with Qwest, Vanion urges this Commission to apply its "fresh look" policy<sup>31</sup> in this case.

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<sup>29</sup> See generally *Volume 2A Order, Qwest Application*, App. C, Vol. 1, Tab 10, at pages 96-104.

<sup>30</sup> See *Volume 5A Order, Qwest Application*, App. C, Vol. 1, Tab 19, at pages 7-19.

<sup>31</sup> A "fresh look" policy provides an opportunity for retail and wholesale customers to exit without penalty an existing and long-term contract with the incumbent BOC.

## 2. Response

The COPUC addressed this issue in its § 271 proceedings.<sup>32</sup> Based on the *SWBT Texas Order*, the hearing commissioner found that it was inappropriate to institute a “fresh look” policy in a § 271 proceeding. The issue raised by Vanion is contrary to this Commission’s directive because it asks for exactly such a “fresh look.”

### G. Unbundled dark fiber

#### 1. Comments

In its *Supplemental Order Clarification*, this Commission determined that interexchange carriers may not convert special access services to combinations of unbundled loop and transport elements unless that carrier provides a “significant amount of local exchange” traffic to a particular customer. AT&T asserts that it is inappropriate for Qwest to apply this Commission’s Enhanced Extended Link (EEL) restriction to unbundled dark fiber (UDF). Comments at pages 43, 102-103.

#### 2. Response

An EEL is an unbundled loop connected to unbundled dedicated transport. Dark fiber can make up both an unbundled loop and unbundled dedicated transport. Accordingly, the hearing commissioner determined that Qwest may apply the EEL restriction to UDF.<sup>33</sup>

Nothing presented requires a finding of lack of compliance with this checklist item.

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<sup>32</sup> See generally *Volume 4A Order, Qwest Application*, App. C, Vol. 1, Tab 7, at pages 15-16.

<sup>33</sup> See generally *Volume 3A Order, Qwest Application*, App. C, Vol. 1, Tab 18, at pages 4-6.

**Checklist item (iv) -- Nondiscriminatory access to local loops**

A. CLEC access to loop qualification and loop makeup information

1. Comments

Covad (comments at pages 13-22), WorldCom (comments at pages 24-25), and AT&T (comments at pages 39-40) criticize the loop qualification and loop makeup information provided by Qwest. They assert that the Raw Loop Data Tool (RLDT) fails to make available to CLECs all loop qualification and loop makeup information that resides in Qwest's loop qualification and back office databases and in other records. Covad also asserts that the ROC OSS test was too limited in scope to ensure that CLECs are able to access all loop information that they need to market and to provide services. Finally, Covad states that it should have the right, in the future, to audit Qwest's loop qualification information to assure parity of information and of access.

2. Response

Although pre-order loop qualification is generally discussed under OSS, loop qualification was addressed in the Colorado workshop 5 on Loops. There were two impasse issues in Colorado: access to pre-order mechanized loop testing (discussed *infra*) and direct access to Qwest's LFACS database. The hearing commissioner addressed these issues.<sup>34</sup> Initially, the hearing commissioner found for the CLECs on the issue; but in his second decision, the hearing commissioner reversed his opinion and found for Qwest.<sup>35</sup>

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<sup>34</sup> See generally *Volume 5A Order, Qwest Application*, App. C, Vol. 1, Tab 19, at pages 31-35; *Motion to Modify Volume 5A Order, Qwest Application*, App. C, Vol. 1, Tab 26, at pages 6-8.

<sup>35</sup> See generally *Motion to Modify Volume 5A Order, Qwest Application*, App. C, Vol. 1, Tab 26, at pages 6-8.

In addition to the information and decisions from workshop 5, the results of ROC OSS Test 12.7 established that, with respect to loop makeup information, the tasks and processes were the same for retail and wholesale customers.<sup>36</sup>

To the extent that CLECs now claim that the ROC OSS test was inadequate with respect to testing for parity in the providing of loop qualification and loop makeup information, we note that CLECs participated in the development of the ROC OSS test plan and, during that process, had the opportunity to seek additional or different testing criteria. It is too late now to criticize the ROC OSS test, as Covad does, as being insufficiently broad.<sup>37</sup>

B. Line-shared loop performance

1. Comments

Covad claims in its comments (pages 31-34) that, due to Qwest's poor and unduly discriminatory performance in the one area where it provides a DSL service (namely line sharing), Qwest has not complied with its obligations under the Act. Covad argues that, unless and until Qwest can demonstrate that it accords parity treatment to Covad in the maintenance and repair of its line shared loops, Qwest's application for § 271 relief must be denied.

2. Response

This was not an impasse issue in Colorado. Line-sharing loop performance was discussed in workshop 3 on Emerging Services. At that point in time, the PIDs were not

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<sup>36</sup> KPMG Final Report, *Qwest Application*, App. G, Vol. 4, Tab 18.1, at pages 126-132.

<sup>37</sup> Further, at its June 2002 *en banc* workshop the COPUC gave CLECs the opportunity to identify and to address areas of the ROC OSS test that the CLECs believed were insufficient for Colorado. Covad participated in that workshop but did not identify this area as a deficiency.

disaggregated to include line-sharing. The *COPUC Staff's Report on Workshop 3*<sup>38</sup> discussed the Covad concerns. In particular, Covad raised the issues of (1) incorrectly wired splitters, (2) missed cross-connects, and (3) lack of training, both for technicians and repair and maintenance personnel. There was no SGAT language changed, nor were there any impasse items presented to the hearing commissioner for decision. Insofar as Covad relies in its comments on recent commercial experience, this was not brought to the attention of the COPUC at the Colorado *en banc* workshop on commercial experience.

C. Failure to provision DSL to CLEC voice customers

1. Comments

WorldCom asserts that Qwest does not permit CLEC UNE-P voice customers to use Qwest's DSL service. Comments at pages 26-27. WorldCom claims that this is anti-competitive.

2. Response

The COPUC agrees with WorldCom. Such a policy and such conduct, if they occur, are anti-competitive; constitute a potential violation of antitrust laws; and are void as a matter of public policy. For these reasons, among others, the hearing commissioner ordered Qwest to offer its retail DSL service on a stand-alone basis when a CLEC provides voice service over UNE-P.<sup>39</sup> This requirement appears in the Colorado SGAT at § 9.23.3.11.7 and is a condition of the COPUC's favorable recommendation to this Commission.<sup>40</sup>

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<sup>38</sup> See *COPUC Staff's Volume 3 Report, Qwest Application*, App. K, Vol. 1, Tab 1150, at page 114.

<sup>39</sup> See generally *Volume 5A Order, Qwest Application*, App. C, Vol. 1, Tab 19, at pages 5-9.

<sup>40</sup> *Id.* at 9.

If Qwest is not abiding by this requirement, a CLEC can seek redress before the COPUC or this Commission. During the Colorado § 271 proceedings, WorldCom did not bring to our attention any concerns or evidence that Qwest is not complying with the requirement to provide its retail DSL service on a stand-alone basis when a CLEC provides voice service over UNE-P.

D. Mechanized loop testing unavailable

1. Comments

AT&T (comments at page 40) and Covad (comments at pages 22-25) complain about Qwest's failure to provide pre-order Mechanized Loop Testing (MLT). They assert that Qwest refuses to ensure that the line-shared loop UNE will meet technical specifications necessary to provide, and will be sufficient to support, DSL services.

2. Response

As shown in the Colorado record, Qwest ran a MLT on its copper loops and loaded the resulting data into its RLDT. These data are available for CLEC use and, from the Colorado record, appear to be satisfactory. Based on his reading of this Commission's *Verizon Massachusetts Order*, the hearing commissioner determined that Qwest is not required to do more.<sup>41</sup>

When Covad raised this issue to the COPUC, the COPUC affirmed the hearing commissioner.<sup>42</sup> The COPUC determined that, as here, Covad had presented no new evidence in support of its request; that this Commission has given no indication that pre-order MLT is required; and that Qwest does not provide pre-order MLT for its own retail services. These conclusions still hold true.

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<sup>41</sup> *Id.* at 36-39.

<sup>42</sup> See generally *SGAT Compliance Order, Qwest Application*, App. C, Vol. 1, Tab 31, at pages 14-15.



Nothing presented requires a finding of lack of compliance with this checklist item.

**Checklist item (vi) -- Nondiscriminatory access to unbundled local switching**

1. Comments

AT&T objects to the Colorado SGAT provision that permits Qwest to count access lines on a per wire center basis when this Commission's EEL exception applies. Comments at pages 95-98. AT&T asserts that counting access lines on a per location basis more accurately reflects and preserves the exception created in the *UNE Remand Order*.

2. Response

This Commission has determined that incumbent local exchange carriers which provide access to EELs need not allow a CLEC access to unbundled switching in the most dense urban zones in the top 50 metropolitan statistical areas in situations in which the CLEC end user has four or more lines. This is an exception to the unbundling requirement, is intended to separate the "mass market" (*i.e.*, residential and small business) from the medium and large markets, and is designed to be an "administratively simple rule."<sup>43</sup>

Bearing this in mind and cognizant of the absurd results that could arise under AT&T's proposal, the hearing commissioner concluded that the per wire center interpretation was more consistent with the FCC's purpose in creating the exception and would result in similar treatment in all circumstances. He found that the AT&T per

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<sup>43</sup> *UNE Remand Order* at ¶¶ 276, 290-298.

location language could result in dissimilar treatment of CLECs and that the per location language was a thinly-veiled attempt to avoid the exception.<sup>44</sup> Accordingly, he refused to adopt the per location concept.

Nothing presented requires a finding of lack of compliance with this checklist item.

**Checklist item (xi) -- Local number portability**

1. Comments

OneEighty objects to Qwest's application because, it claims, Qwest does not have a working process or internal controls in place to manage number portability. Comments at pages 2-6. It recounts events that occurred in July of 2002 in support of its contention.

2. Response

First, in the Colorado § 271 proceeding the hearing commissioner addressed the very issue (*i.e.*, coordination of conversions) raised by OneEighty.<sup>45</sup> He determined that Qwest's *procedures* are appropriate. He also noted that Local Number Portability (LNP) is the subject of three Performance Indicator Definitions<sup>46</sup> incorporated into the Colorado Performance Assurance Plan (Colorado PAP or CPAP). Qwest's monthly performance under these PIDs is reported and, if it fails to meet the standard, results in Qwest's making payments under Tier 1A to CLECs.

Second, the actions of Qwest described by OneEighty in its comments were not presented in Colorado, and could not have been presented, as they occurred after the record closed in the Colorado § 271 proceedings. COPUC notes, however, that a CLEC

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<sup>44</sup> See generally *Volume 4A Order, Qwest Application*, App. C, Vol. 1, Tab 7, at pages 40-43.

<sup>45</sup> See generally *Volume 5A Order, Qwest Application*, App. C, Vol. 1, Tab 19, at pages 58-61.

<sup>46</sup> The PIDs are OP-17A (timeliness of disconnects associated with LNP order), MR-11 (LNP trouble reports cleared within 24 hours), and MR-12 (LNP trouble reports - mean time to restore).

may seek redress from the COPUC or this Commission if the *practices* of Qwest do not conform to its procedures. Further, as noted above, there are penalties associated with Qwest's performance falling below the standard.

Nothing presented requires a finding of lack of compliance with this checklist item.

#### RATES FOR UNBUNDLED NETWORK ELEMENTS, FOR INTERCONNECTION, AND FOR RESALE

##### A. Colorado-specific inputs

##### 1. Comments

Both AT&T (comments at pages 59-69) and WorldCom (comments at pages 31-32) take issue with the inputs used to derive the Colorado rates for interconnection, unbundled network elements, and resale. AT&T applauds the COPUC's use of the HAI Model<sup>47</sup> (comments at page 50) but deplores the Colorado-specific inputs used to determine a portion of recurring and non-recurring rates, finding the resulting rates to be not Total Element Long Run Incremental Cost (TELRIC)-compliant. The predictable result is that AT&T urges this Commission to deny Qwest's application.

##### 2. Response

Before addressing AT&T's issues again,<sup>48</sup> a brief review of the legal standard, of the state commission's role in wholesale rate determination, and of the procedural background of the Colorado pricing docket is in order.

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<sup>47</sup> And how could it not? After all, AT&T and WorldCom sponsored the use of this model in the COPUC rate proceeding, Docket No. 99A-577T.

<sup>48</sup> We have previously addressed AT&T's comments and concerns in our pricing docket.

The legal standard is easy to state but, as this Commission is well aware, difficult to apply. The Act requires prices for interconnection and UNEs to be “based on cost” and “nondiscriminatory.”<sup>49</sup> This Commission has expanded on those criteria, declaring that interconnection and UNEs be priced according to the TELRIC method with a reasonable allocation of joint and common costs (TELRIC plus).<sup>50</sup>

The devil, as they say, is in the details. As relevant here, that means that the COPUC, because it is the agency most familiar with the needs, circumstances, and peculiarities of Colorado, must determine the *Colorado-specific* TELRIC-compliant rates.<sup>51</sup> As we explained in our evaluation at pages 27-30, this is no easy task in view of Colorado’s unique topography, severe climactic factors, and uneven population dispersement.

The COPUC’s task was further complicated by the complexities of the TELRIC method analysis. We took our task and the challenge to produce TELRIC-compliant rates very seriously. The COPUC fully understands the importance of this pricing task because it is one of the linchpins in assuring the introduction and growth of local competition.

Our pricing proceeding rested on the principle that, if a price set by the COPUC falls within the TELRIC range of reasonableness, the price satisfies this Commission’s pricing guidelines.<sup>52</sup> To reach this result, we focused on three things: (1) the relative

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<sup>49</sup> 47 U.S.C. §§ 252(1)(A)(i) and (ii); *see generally* *Commission Order (Decision No. C01-1302), Qwest Application*, App. C, Vol. 2, Tab 10, at pages 8-13.

<sup>50</sup> 47 C.F.R. § 51.5012.

<sup>51</sup> This is a role assigned to the state commissions precisely because they are familiar with the peculiarities of, and competitive situation in, their respective states. This Commission has been loath (and, absent an overwhelming reason, should be loath) to second guess a state commission in its determination of the appropriate input in the calculation of a TELRIC-compliant rate. *See, e.g., BellSouth Georgia/Louisiana Order*, Appendix D at ¶ 45; *BANY Order* at ¶ 59.

<sup>52</sup> *Commission Order (Decision No. C01-1302), Qwest Application*, App. C, Vol. 2, Tab 10, at page 12.

merits and transparency of the cost models presented by the parties; (2) the reasonableness of the assumptions underlying the cost models; and (3) whether the cost models give outputs that yield plausible, real world, TELRIC prices.<sup>53</sup> We have no doubt that the rates established for Colorado are TELRIC-compliant and that this Commission will agree.

Lest there be any misunderstanding of the Colorado pricing proceeding, the COPUC presents here a brief overview of the process. Initially, it is important to note that the Colorado pricing proceeding was fully-litigated ratemaking. The Commission heard many witnesses over several weeks of hearings and held a technical conference devoted to exploration of the proffered cost models. There were two opportunities for parties to file requests for reconsideration of COPUC pricing orders. In short, the Colorado pricing proceeding was fully and fairly litigated.

The COPUC set TELRIC rates in a prior proceeding (Docket No. 96S-331T). In its most recent pricing proceeding (Docket No. 99A-577T), the proceeding which underpins Qwest's application, the COPUC reviewed rates and recalculated those rates that were no longer TELRIC-compliant.<sup>54</sup> The COPUC *also* determined TELRIC-compliant rates for products and services not addressed in the prior proceeding.

The COPUC issued three orders which, taken together, constitute its pricing decision.<sup>55</sup> In reaching its decision, the COPUC first selected the appropriate model. It then determined the *Colorado-appropriate* input assumptions for values such as drop

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<sup>53</sup> *Id.* at page 14.

<sup>54</sup> *Id.* at pages 24-26.

<sup>55</sup> *Commission Order (Decision No. C01-1302), Qwest Application*, App. C, Vol. 2, Tab 10; *Ruling on Applications for RRR (Decision No. C02-409), Qwest Application*, App. C, Vol. 2, Tab 11; *Decision on Applications for RRR (Decision No. C02-636), Qwest Application*, App. P, Vol. 1, Tab 12.

lengths, fill factors, plant mix, line counts, and placement costs.<sup>56</sup> Finally, capital and expense factors were reviewed. The rates contained in Exhibit A to the Colorado SGAT are the product of this in-depth investigation and review process.

The COPUC's pricing proceeding (Docket No. 99A-577T) remains open. There will be a phase 2 to determine final TELRIC-compliant rates for those products and services which are today offered under interim rates.<sup>57</sup> In addition, the phase 2 proceeding will permit parties to raise for the COPUC's consideration issues which were not addressed during phase 1 or which have come to light since phase 1 ended.

We now turn to AT&T's complaints.

First, AT&T asks this Commission to employ a "stare and compare" method to determine that the Colorado non-recurring rates for "hot cuts" and basic loop installation are not TELRIC-compliant. Comments at pages 60-62. For the reasons discussed in our evaluation at pages 27-29 and in this reply *supra*, "stare and compare" is inappropriate. In addition, AT&T has provided no evidence establishing that the conditions in the states referenced in its comments are in any way whatsoever comparable to Colorado. Just because this Commission has previously granted § 271 relief to a particular state does not mean that that state's rates must be -- or should be -- applied in other jurisdictions.

Second, AT&T denounces COPUC's use of the Qwest ENRC cost model, citing "myriad clear TELRIC errors" and presents this Commission with a "parade of horrors"

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<sup>56</sup> *Commission Order (Decision No. C01-1302), Qwest Application*, App. C, Vol. 2, Tab 10, at pages 40-57; *Ruling on Applications for RRR (Decision No. C02-409), Qwest Application*, App. C, Vol. 2, Tab 11, at pages 28-47; *Decision on Applications for RRR (Decision No. C02-636), Qwest Application*, App. P, Vol. 1, Tab 12, at pages 4-10.

<sup>57</sup> As used here, "interim" means that the rates will be reviewed and final rates will be set in phase 2. The COPUC has evaluated all wholesale rates -- permanent and interim -- offered by Qwest in Colorado.

concerning allegedly non-TELRIC input assumptions used in setting UNE loop rates. Comments at pages 62-64. This is a continuation of the battle fought before the COPUC in the pricing proceeding.

As stated in our evaluation,<sup>58</sup> the COPUC first adopted the overwhelming majority of Qwest's non-recurring rates *in toto*. On reconsideration, concurring in part with the substantial evidence presented and the arguments made by AT&T, the COPUC adjusted a number of the inputs to assume that more non-recurring activities would take place through electronic processing. We also reviewed and considered the numerous alternative input assumptions, for both recurring and non-recurring rates (including UNE loops), offered by all the parties.

Not surprisingly, neither these changes nor the resulting rates satisfied AT&T, as evidenced by its comments in this proceeding. It offers "evidence," in the form of affidavits, that the contested rates should be lower. This presentation is far from persuasive.

It is no doubt possible, as demonstrated by AT&T's affidavits, to use a different set of assumptions to reduce rates downward. The assumptions that yield such dramatically lower costs, however, fly in the face of real world forward-looking assumptions for an efficient carrier in the state of Colorado; they use instead "pie in the sky" assumptions about those forward-looking cost inputs. The COPUC chose not to do that. This Commission likewise should turn a deaf ear to AT&T's arguments.

Third and finally, using the "stare and compare" argument, coupled with an assertion that the COPUC did not review Qwest's interim switching rates and the

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<sup>58</sup> See *COPUC Evaluation* at pages 33-34.

improper inputs arguments, AT&T challenges the COPUC's switching rates. Comments at pages 64-69. For the reasons discussed *supra*, "stare and compare" is an inappropriate approach. The other arguments are similarly unavailing.

The Qwest switching rates are *interim* and will be reviewed in phase 2 of the cost proceeding. Equally important, as discussed in our evaluation at page 32, AT&T did not object to the revised and interim rates when offered the opportunity to do so.<sup>59</sup> It cannot -- and should not -- be permitted to raise here a concern that it did not first raise in the Colorado rate proceeding.

B. High frequency portion of the loop (HFPL)

1. Comments

Covad challenges the positive rate for the High Frequency Portion of the Loop. Comments at pages 5-13. As it did before the COPUC, Covad advocates here for a rate of \$0 and claims that the COPUC should not have relied on a privately-negotiated agreement to set the HFPL price.<sup>60</sup>

2. Response

We addressed this issue in our evaluation at pages 35-36 and extensively in our pricing proceeding orders<sup>61</sup> and will not repeat that discussion here. Suffice it to say, under this Commission's pricing rules (as well as our own), a zero rate is inappropriate

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<sup>59</sup> *Decision on Applications for RRR (Decision No. C02-636), Qwest Application*, App. P, Vol. 1, Tab 12, at pages 10-12.

<sup>60</sup> Probably inadvisedly, our comments about the HFPL continue to ignore *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002). Needless to say, the rules this decision vacates -- which we recognize is subject to reconsideration and appeal -- obviate this entire issue.

<sup>61</sup> For a complete exposition on this issue and the bases for the COPUC's determination, *see Commission Order (Decision No. C01-1302), Qwest Application*, App. C, Vol. 2, Tab 10, at pages 107-118; *Ruling on Applications for RRR (Decision No. C02-409), Qwest Application*, App. C, Vol. 2, Tab 11, at pages 83-88; *Decision on Applications for RRR (Decision No. C02-636), Qwest Application*, App. P, Vol. 1, Tab 12, at pages 16-18.



for a product (such as HFPL) that uses the loop, causes costs on a forward-looking basis, and thus contributes to cost causation.<sup>62</sup> In addition, economic theory suggests that a product (such as HFPL) for which there is a positive demand must have a positive price. Finally, the COPUC relied on a privately-negotiated rate from a Qwest Line Sharing Agreement, which price was agreed to under the provisions of § 252 of the Act. For these reasons, the positive rate for HFPL is appropriate.<sup>63</sup>

### C. Price squeeze

#### 1. Comments

Although it is at present providing residential service in some portions of Colorado,<sup>64</sup> WorldCom (comments at pages 32-34) raises the specter of a price squeeze that prevents residential competition in Zone 3 in Colorado.

#### 2. Response

We addressed this issue in our evaluation at pages 60-61 and extensively in our § 271-related decisions<sup>65</sup> and will not repeat that discussion here. Suffice it to say, the COPUC has several times been confronted with, and rejected, this argument. We determined that no party presented persuasive evidence that “the rates adopted [in the

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<sup>62</sup> 47 C.F.R. §§ 51.501(a) and (c); Colorado Costing and Pricing Rule, 4 *Code of Colorado Regulations* 723-40-4.2(a)(iv).

<sup>63</sup> See *infra* for discussion of line-sharing rate deaveraging necessary in the phase 2 cost proceeding. Footnote 156 of the *DOJ Evaluation*, at page 32, appears to misapprehend our rationale and legal prerogative within the wholesale price-setting docket. While we recognize the imperative to rebalance rates to reflect a positive HFPL, the Colorado Administrative Procedure Act did not allow us the latitude to import *retail* pricing issues into a docket noticed as setting *wholesale* prices. We concluded, quite rightly, that this limitation should not prevent us from trying to get the wholesale HFPL rate “right.” As for our purported confusion about economic benefit and cost, we deny any confusion whatsoever. The price of the HFPL, we reasoned, is truly a joint products problem, with Ramsay efficiency leading to the intuition that the lion’s share of the joint cost would be recovered from the voice-side. Because no party even tried to make such an argument or to introduce such evidence, we fell back on the negotiated rate.

<sup>64</sup> Comments at page 33.

<sup>65</sup> See generally *Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 29.1, at pages 32-42 (the price squeeze issue does not preclude a finding that Qwest’s interLATA entry is in the public interest); *Ruling on Applications for RRR (Decision No. C02-409), Qwest Application*, App. C, Vol. 2, Tab 11, at pages 14-24.

pricing proceeding] make a price squeeze unavoidable or even probable. Similarly, the record does not support the argument that the adopted rates will doom competition to failure.”<sup>66</sup>

State commissions are faced with a difficult balancing act when setting wholesale prices: set the rates too high, there may be a price squeeze; set the rates too low, CLECs may be encouraged to purchase UNEs and wholesale services rather than build their own facilities. In the final weighing, the COPUC found that the rates are TELRIC-compliant and do not create a price squeeze. The fact is that the Colorado rates, while they may not be sufficient for some competitors or for a particular mode of entry, are sufficient for the continuation of competition. And, after all, this satisfies the purpose and the goal of the Act.

D. Deaveraged unbundled loop rate and averaged recurring line-sharing rate

An issue has arisen since the filing of our evaluation on July 2, 2002. We note that we have deaveraged our unbundled analog and high-capacity loop rates into three rate groups on an interim basis. Because these interim rates do not match TELRIC costs by wire center and do not mesh well with the Colorado High Cost Support Mechanism (CHCSM), we will take up deaveraging again in phase 2 of our pricing proceeding (Docket No. 99A-577T). Consistency counsels that we should also examine deaveraging our recurring line-sharing rates at the same time. Although no commentor brought this matter up in its comments, we recognize the need to consider this issue and will put the parties on notice that the issue of line-sharing deaveraging will be taken up in phase 2.

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<sup>66</sup> *Ruling on Applications for RRR (Decision No. C02-409), Qwest Application*, App. C, Vol. 2, Tab 11, at page 19.

We further note that no party pointed out this anomaly to us during the course of our two reconsiderations of our orders in phase 1 of our pricing proceeding, Docket No. 99A-577T. By no means does this eliminate the anomaly and need to deaverage the line-sharing rate, but it does indicate the relative importance to the parties, who should be expected to know their own interests better than the COPUC, the Department of Justice, or the Commission.

Nothing presented requires a finding of lack of compliance with the § 271 checklist.

#### ACCESS TO OPERATIONAL SUPPORT SYSTEMS AND THE ROC OSS TEST

##### A. Scope of ROC OSS test

###### 1. Comments

WorldCom states in its comments (page 4, echoed on page 15) that the “third-party test did not even attempt to evaluate all of the OSS deficiencies that might exist.”

###### 2. Response

CLECs -- including WorldCom -- were actively involved in formulating the ROC OSS test. WorldCom itself is at least partially responsible if an area of especial concern to it was not addressed.<sup>67</sup> In fact, at the COPUC’s June, 2002, *en banc* workshop on the ROC OSS test, Commission counsel questioned each CLEC in turn whether there were remaining issues specific to Colorado not covered by the ROC OSS test. No CLEC indicated that any issues remained.

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<sup>67</sup> To the extent that other commentors hint that the ROC OSS test was insufficiently inclusive and did not test their particular concern, they likewise share responsibility, at least in part, for the scope of the test and for any deficiencies in the scope.

## B. Change Management Process

### 1. Comments

This area occasioned many comments: AT&T comments at pages 30-38, CompTel comments at pages 3-7, and WorldCom comments at pages 19-23. The commentors principally assert that the alleged failure of Qwest to demonstrate a pattern of compliance with its Change Management Process (CMP), the deficiencies in the test environments, and the fact that several of the CMP-related test criteria were closed “not satisfied” or “unresolved/inconclusive” must result in this Commission’s denying Qwest’s application.

### 2. Response

As this Commission has stated, Change Management Process (CMP) redesign and implementation is a dynamic process.<sup>68</sup> Within the framework this Commission has established, the COPUC reviewed the Qwest CMP. We conducted an in-depth and careful review -- including taking extensive testimony -- of the CMP-related ROC OSS test results. Our Staff has been -- and continues to be -- intimately involved in the CMP redesign process and attends CMP monthly meetings to observe implementation of the CMP process. As a result of this review and the information provided in the record by our Staff, we reached the conclusion that the CMP is satisfactory and that Qwest has demonstrated compliance over time.<sup>69</sup>

After consideration of the information presented during our § 271 proceeding and with the understanding provided by our Staff’s involvement in the CMP redesign process, we determined that the CMP-related test criteria which were closed “not satisfied” or

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<sup>68</sup> *BellSouth Georgia/Louisiana Order* at ¶ 193.

<sup>69</sup> *See generally Section 271 Compliance Order* at pages 111-151.

“unresolved/inconclusive” provided no basis for a finding of non-compliance. *COPUC Evaluation* at pages 45-49. Similarly, we found that Qwest had demonstrated a pattern of compliance over time because the bulk of the CMP provisions have been in place for months and that Qwest implemented quickly, and has adhered to, those provisions. In addition, the COPUC found that Qwest has followed the basic process for prioritization for IMA releases 10.0 and 11.0. *Id.* at pages 52-53.

As discussed in our evaluation at page 48, KPMG was unable to reach a result on three testing criteria measuring implementation of product and process CMP, an issue raised by one of the commentors. The COPUC had previously addressed this issue by requiring Qwest to file the Qwest-initiated product and process change request process for inclusion in the Colorado Performance Assurance Plan.<sup>70</sup> Qwest has done so, and we are now in the process of determining the penalties which will attach if Qwest does not meet the time lines and milestones. Including the product and process CMP in the CPAP should provide an incentive for Qwest to meet the related due dates and will provide the COPUC with the opportunity to analyze any pattern of poor performance.

Much is made of CLEC-reported deficiencies in the test environments provided by Qwest. The COPUC has addressed this issue by requiring Qwest to include a new Performance Indicator Definition (PID), PO-19, in the CPAP.<sup>71</sup> This PID will undergo refinement in the near future, and a PID PO-19b will be added. PID PO-19b will measure the degree to which the test environment mirrors production and will be added to the CPAP with appropriate penalties. The addition of this PID provides assurance that

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<sup>70</sup> See generally *CPAP Order, Qwest Application*, App. C, Vol. 1, Tab 30, at page 15.

<sup>71</sup> PID PO-19, which has been added to the CPAP, has a 95% performance benchmark and carries a \$50,000 payment penalty.

the Qwest test environment will mirror production and provides the COPUC with the opportunity to analyze any pattern of poor performance.<sup>72</sup>

The arguments presented by the commentors are the same arguments presented during our § 271 process. They have offered nothing new, and nothing proffered here has caused the COPUC to change its opinion that Qwest has met this Commission's requirements.

C. Unfiled ("secret") agreements<sup>73</sup> and data accuracy

1. Comments

Commentors AT&T (comments at pages 15-17 and 25-28), CompTel (comments at page 15), and WorldCom (comments at pages 4-5) raise the question of the impact of the unfiled agreements on the ROC OSS test data. They assert that, because specific test sections contain conclusions based, at least in part, on information received from CLECs which allegedly have unfiled "secret" agreements with Qwest, the test results are questionable. As a result, they state the ROC OSS test results should not be relied upon to support Qwest's application.

2. Response

Based on our examination of this issue, which included reviewing the five agreements filed in our § 271 proceeding and hearing extensive testimony on the subject, the COPUC found no evidence that called into question the ROC OSS test results.<sup>74</sup> We provided ample opportunity for an interested CLEC to present evidence which would indicate, or at least raise a serious question, that the use of data from CLECs having

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<sup>72</sup> See generally *Section 271 Compliance Order* at pages 141-147.

<sup>73</sup> We also address these agreements *infra* in the public interest portion of this reply.

<sup>74</sup> For a complete discussion of the issue, see *COPUC Evaluation* at pages 39-41; *Section 271 Compliance Order* at pages 108-10.

“secret” agreements with Qwest had skewed the test data and/or results. Although CLECs have access to public data from which they could have performed a comparative analysis to demonstrate such an impact, no CLEC presented those comparative data to us.<sup>75</sup> We note that CLECs have presented no such comparative data to this Commission either.

On its own initiative, KPMG performed an analysis to determine whether CLECs with “secret” agreements had provided data used in the ROC OSS test and, if so, to determine how much a test portion relied on data provided by such a CLEC. Based on testimony from KPMG on this subject, we were convinced that KPMG did not undertake this analysis because it had any concerns about the information. Rather, the analysis was done because, based on its prior and extensive work in § 271 tests, KPMG surmised that CLECs would raise the “secret” agreement issue to call the test results into question; and KPMG wished to be prepared for that eventuality. The analysis had the additional benefit of calling this issue to everyone’s attention so that it could be fully examined during state commission review of the ROC OSS test.

On balance, we concluded that, even if the “secret” agreements had an impact on the test data, the impact was negligible. We were -- and remain -- comfortable relying on the ROC OSS test, as this Commission should be.

#### D. Manual processing and human error

##### 1. Comments

As they did before the COPUC, the CLECs raise the issue of manual processing and the resultant human error as a basis for finding that the ROC OSS test fails to

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<sup>75</sup> The COPUC does not know whether the analysis was not done or whether, if done, the results did not support the CLECs’ claims.

demonstrate compliance with the requirements of § 271. AT&T comments at pages 40-42, Covad comments at pages 39-42, WorldCom comments at pages 10-12. Although they acknowledge that Qwest has proposed a PID, PO-20, to address the issue of the accuracy of orders that are processed manually, CLECs state that the proposed PID PO-20 is unsatisfactory.

## 2. Response

Nothing presented changes our view, stated in our evaluation at pages 38-39, that human errors uncovered during the ROC OSS test are not fatal to Qwest's application. We exhaustively examined this issue during our *en banc* workshop held in June, 2002. We heard testimony from KPMG and from CLECs on this question. The COPUC determination is based on our record.<sup>76</sup>

To the complaint that the Qwest-proposed PID PO-20 is inadequate, there is a simple response: the PID is *proposed, not final*. At the direction of the COPUC, PID PO-20 is being developed for inclusion into the Colorado PAP.<sup>77</sup> As with the PIDs for the ROC OSS test, PID PO-20 will be developed through a collaborative process<sup>78</sup> with CLECs having an opportunity to determine the scope of the final PID. Any interested CLEC can, and should, participate in this development process to assure that the products, services, and processes of interest to it are included in the performance measure and that the metrics used for measurement address the problems identified by that CLEC.<sup>79</sup>

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<sup>76</sup> See generally *Section 271 Compliance Order* at pages 70-75.

<sup>77</sup> *Id.* at pages 70, 73-75.

<sup>78</sup> This collaborative process will be conducted under the aegis of either the ROC or the COPUC.

<sup>79</sup> To Covad's point (comments at page 41 & n.42) that PID PO-20 would be diagnostic, this is consistent with the Colorado PAP, under which new PIDs are initially diagnostic so that we can gain experience and "work out the bugs" before penalty payments attach. *CPAP Order, Qwest Application*, App. C, Vol. 1, Tab 30, at page 8.



E. Status notices

1. Comments

AT&T (comments at page 40), Covad (comments at pages 28-31), and WorldCom (comments at pages 12-15) assert that Qwest's status notice process is deficient and that CLECs receive conflicting or insufficient status notices. They claim that Qwest has not established its compliance with § 271.

2. Response

This is discussed in our evaluation at pages 37-38.<sup>80</sup> Nothing presented in any comment has led us to change our decision that Qwest's OSS is § 271-compliant. In reaching its decision, the COPUC was, and remains, confident that the measures contained in the Colorado PAP will provide ample incentive for Qwest to keep this portion of its OSS compliant. Should difficulties arise in the future, the COPUC will be informed through the Colorado PAP performance results and can take action as appropriate.

F. Liberty audit and data reconciliation

1. Comments

AT&T (comments at pages 46-48) and Covad (comments at pages 42-45) question the thoroughness of the audit and data reconciliation conducted by Liberty as part of the ROC OSS test.

2. Response

Liberty Consulting conducted a data reconciliation for Colorado and reported its results to the COPUC in written reports and testimony. COPUC permitted parties to

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<sup>80</sup> See also and generally *Section 271 Compliance Order* at pages 65-68.

address data reconciliation on February 14 and 15 and June 12, 2002. During the proceeding COPUC heard nothing that would lead it not to believe Liberty's conclusions. The CLEC commentors have presented nothing new in this FCC proceeding. The COPUC's conclusion remains the same.

With respect to the AT&T claim that, during the course of the ROC OSS test, Liberty did not validate the accuracy of the performance data, COPUC notes that this was not within the scope of Liberty's charge. Further, the audit processes used by Liberty were well known during the ROC OSS test and are documented in Liberty's audit report. If AT&T wanted validation of performance data accuracy, AT&T should have asked that that validation be part of the ROC OSS test. If AT&T was concerned about the audit processes used by Liberty, AT&T had ample opportunity to raise this issue before the COPUC. It did not do so.

G. Preordering and ordering integration

1. Comments

AT&T (comments at page 39) and WorldCom (comments at pages 6-8) complain about the lack of integration in Qwest's pre-ordering and ordering processes.

2. Response

This issue was investigated by the COPUC during its *en banc* workshop held in June, 2002. First, Liberty Consulting concluded that such integration is possible.<sup>81</sup> Second, Qwest presented evidence that at least two service bureaus have integrated the pre-order and order interfaces. Nothing presented changes the COPUC's determination.

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<sup>81</sup> See generally *HP Pre-Order/Order Integration Field Comparison Report*, *Qwest Application*, App. G, Vol. 4, Tab 18.8, pages 22-23; oral testimony presented at COPUC *en banc* workshop, June 10, 2002.

## H. Provisioning intervals

### 1. Comments

Both AT&T (comments at page 43) and WorldCom (comments at pages 15-16) raise concerns about the provisioning of CLEC orders for UNE-P and for resale.

### 2. Response

The COPUC discussed the provisioning of UNE-P and resale order in its evaluation at page 42.<sup>82</sup> The issues received extensive examination in the Colorado § 271 proceeding. Nothing presented here causes the COPUC to reconsider its decision.

In reaching its decision, the COPUC relied on commercial performance in Colorado. We also were, and remain, confident that the measures contained in the Colorado PAP will provide ample incentive for Qwest to keep this portion of its OSS compliant. Should difficulties arise in the future, the COPUC will be informed through the Colorado PAP performance results and can take action as appropriate.

## I. Repairing trouble reports on CLEC lines

### 1. Comments

As they did in the Colorado proceeding, AT&T (comments at page 44) and WorldCom (comments at pages 16-17) argue that Qwest does not provide access to maintenance and repair because of repeat trouble rates on CLEC lines.

### 2. Response

The COPUC discusses this issue in its evaluation at page 43. It received attention during the Colorado § 271 proceeding. We determined, based on commercial experience in Colorado, that the ROC OSS test results do not reflect adversely on the

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<sup>82</sup> See generally *Section 271 Compliance Order* at pages 79-82.

CLECs' ability to use Qwest's OSS.<sup>83</sup> Importantly, in contrast to the advocacy now, no CLEC identified this as a fatal flaw in terms of accepting the overall test results or to a finding of overall OSS compliance. As CLECs have presented nothing new in this docket, the COPUC determination remains the same: Qwest's OSS is § 271 compliant.

## J. Billing

### 1. Comments

At pages 17-19 of its comments, WorldCom raises the issue of billing accuracy in general.<sup>84</sup>

### 2. Response

The issues of billing were examined by the COPUC.<sup>85</sup> We concluded that the "unable to determine" resolution of the ROC OSS test criteria addressing billing did not impact CLECs' ability to use Qwest's OSS. We note that no CLEC -- including WorldCom, which participated vigorously in Colorado's proceedings -- offered any written comments on these test criteria, from which we concluded that these criteria are of lesser (or no) importance to CLECs. Nothing presented in WorldCom's comments cause the COPUC to reconsider its determination.

## K. Miscellaneous

### 1. Comments

Commentors raise several additional, but relatively minor, issues pertaining to the ROC OSS test and access to OSS.

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<sup>83</sup> *Id.* at pages 92-96.

<sup>84</sup> As noted *supra*, WorldCom also raises questions about auditable bills in a Carrier Access Billing System Bill Operating System (CABS BOS) format. This issue was not presented in Colorado.

<sup>85</sup> See generally *Section 271 Compliance Order* at pages 101-105.

## 2. Response

To the extent the issues were raised in Colorado, they are addressed in the *Section 271 Compliance Order*.<sup>86</sup> Nothing presented in the comments filed with this Commission has led the COPUC to change its view that Qwest has satisfied § 271.

### L. A final observation

The COPUC conducted an exhaustive investigation of the ROC OSS test results. Our Staff participated actively in the entire ROC OSS test and in the CMP redesign and implementation processes. We have addressed concerns about Qwest's future OSS performance through the Colorado PAP.

We believe that the remarks in our evaluation at pages 44-45 bear repeating here:

In sum, the COPUC believes that the Qwest OSS meets the § 271 requirements. Even where Qwest fell short of certain test criteria, the breadth and rigor of the whole test must be kept in mind. This has been the most comprehensive test to date of a BOC's OSS systems. It is not optimal that not all parts of the test were satisfied. Still, in our judgment, the OSS as a whole is functional, capable of being used by CLECs, and gives parity of performance or meets relevant benchmarks. Where the test shows Qwest not meeting the relevant standard, the COPUC is convinced that the deviation is either trivial for competitive purposes or, more importantly, can be addressed on a going-forward basis by enforcement through the CPAP. While the OSS test is a snapshot, the actual performance of the OSS going-forward is what matters to the COPUC and to CLECs. We are confident that we have authored a performance assurance plan that will keep Qwest's OSS performing consistent with the obligations under the Act.

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<sup>86</sup> *Id.* at pages 62-111.

## SECTION 271(D)(3)(B) -- SECTION 272 COMPLIANCE

### 1. Comments

In its comments at pages 106-117, AT&T raised numerous issues pertaining to Qwest's asserted failure to demonstrate that it and its § 272 affiliate will operate in accordance with § 272 of the Act if interLATA authority is granted.

### 2. Response

AT&T relies exclusively on the decision of a Minnesota Administrative Law Judge to support its arguments. Simply, whatever the evidence may have been in Minnesota, the *evidence in Colorado* led the COPUC to reach the opposite conclusion.<sup>87</sup> We found that Qwest satisfies the requirements of § 272. As we stated in our evaluation at page 68: "The record supports the conclusion that Qwest has implemented a number of § 272 safeguards and will comply with § 272 following interLATA entry. Because this is a predictive judgment, it is necessarily a modest one."

AT&T has argued these same issues three times. In this case, the third time is *not* the charm. Nothing presented in this proceeding has led the COPUC to change its evaluation of Qwest's compliance with § 272.

## SECTION 271(D)(3)(C) -- PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

### A. Unfiled "secret" agreements

#### 1. Comments

AT&T (comments at pages 15-28) identifies the unfiled "secret" agreements as evidence that Qwest is in violation of §§ 251(c) and 252(c) of the Act. It argues that

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<sup>87</sup> See generally *COPUC Evaluation* at pages 65-68; *Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 29.1, at pages 3-21; *Section 271 Compliance Order* at pages 53-57.

Qwest's § 271 application should be denied until further *state* proceedings are concluded and "the section 271 process [is restarted] with full participation by all interested parties." *Id.* at page 17.

## 2. Response

The allegation of illicit agreements is a potentially serious issue, but it is not a serious § 271 issue. The COPUC investigated to determine the impact, if any, of the unfiled agreements on Qwest's compliance with § 271.<sup>88</sup> We reviewed the five proffered unfiled agreements and heard testimony on the issue. In our record, no CLEC was able to produce any information supporting the claim that the unfiled "secret" agreements had probative value for § 271 purposes. We also recognized that there is no real remedy in the § 271 process for the issues surrounding the unfiled "secret" agreements. In the end, therefore, the COPUC decided that there was no reason to delay its consideration of Qwest's application.

AT&T asked the COPUC -- as it has asked the ROC OSS test participants and as it asks this Commission now -- to delay consideration of Qwest's § 271 application until the completion of further, unspecified proceedings. We declined to do so,<sup>89</sup> as should this Commission.

First, the issue is under investigation in Colorado, as it is in other states. If wrong-doing is found, the COPUC will take appropriate action. Second, AT&T -- or any other CLEC -- is free to take action to secure for itself whatever beneficial provisions

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<sup>88</sup> See generally *Section 271 Compliance Order* at pages 2-31.

<sup>89</sup> The COPUC has no interest in reopening or in any way continuing its § 271 investigation. Even if this Commission were to deny the Qwest application pending further state proceedings, the COPUC would resist reopening its proceeding because, as discussed above, we see no useful purpose to be served. In that event, we presume that the FCC would undertake the reopened investigation into Qwest's compliance with § 271.

it sees in the now-revealed “secret” agreements through the pick and choose process. Third, the COPUC believes this became a “non-issue” when Qwest voluntarily agreed to provide copies of all contracts, agreements, and letters of understanding with CLECs that create forward-looking obligations. AT&T alleges “discrimination” and “prejudice” to CLECs that arose from their inability to know the terms of the “secret” deals and their resultant inability to “pick and choose” terms from those deals. Qwest’s voluntary agreement to provide those written deals should suffice to remove this concern.<sup>90</sup> Fourth, and most important to the COPUC, the only “remedy” suggested by AT&T is further delay. Delay serves no discernible *public interest* purpose.<sup>91</sup> Indeed, the COPUC found -- as should this Commission -- that delay of Qwest’s application will *actively and affirmatively disserve the public interest* by delaying, for no apparent reason, the competitive benefits to Colorado consumers from Qwest’s entry into the long distance market.<sup>92</sup>

Nothing presented by AT&T causes the COPUC to change its recommendation.

B. Absence of meaningful residential competition

1. Comments

AT&T (comments at pages 133-137) and Sprint (comments at pages 9-11) object to granting Qwest’s application because, in their view, competition in the residential market in Colorado is *de minimis*. They argue, further, that the prospects are dim for improvement due to CLECs’ precarious current financial circumstances.

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<sup>90</sup> Interestingly (and, perhaps, expectedly), AT&T makes no mention of either Qwest’s agreement to provide the written documents or the other actions Qwest has undertaken in response to this CLEC concern.

<sup>91</sup> The *competitive* purpose from AT&T’s standpoint is, of course, painfully self-evident. It is the ultimate in corporate hubris to equate, as AT&T does, the public interest with its corporate interest. Gone are the days when what’s good for AT&T is good for the country (or even, in our case, Colorado).



## 2. Response

The COPUC addressed this argument in its evaluation at page 63.<sup>93</sup> On the record in Colorado, the COPUC found that there is sufficient competition in the residential market.

First, the COPUC, relying on the *Bell Atlantic New York Order*, declined to adopt a market share test for § 271 approval.<sup>94</sup> The record in Colorado establishes the existence of residential competition by facilities-based providers, by purchasers of UNEs, and by resellers. Second, relying on the *Verizon Rhode Island Order*, the hearing commissioner noted that this Commission has rejected the argument, advanced in Colorado and advanced here, that the financial condition of CLECs should be considered in review of a § 271 application.<sup>95</sup> In that order, this Commission stated (citations omitted): “[f]actors beyond the control of the applicant, such as a weak economy, individual competing LEC and out-of-region business plans, or poor business planning by potential competitors can explain the lack of entry into a competitive market.”<sup>96</sup> Because there is nothing new presented and because we have already considered these issues, the COPUC does not change its recommendation.

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<sup>92</sup> *Section 271 Compliance Order* at pages 30-31; *see also Motion to Modify Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 31.1, at pages 12-13 (discussion of the benefits to consumer welfare of adding Qwest as a competitor in the long distance market).

<sup>93</sup> *See generally Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 29.1, at pages 30-32; *Motion to Modify Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 31.1, at pages 12-13; *Section 271 Compliance Order* at pages 33-34.

<sup>94</sup> *Section 271 Compliance Order* at pages 33-34.

<sup>95</sup> *Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 29.1, at pages 64-65.

<sup>96</sup> *Verizon Rhode Island Order* at ¶ 106.

## C. Colorado performance assurance plan

### 1. Comments

In the AT&T comments (pages 142-146), the CompTel comments (pages 15-16), and the OneEighty comments (pages 6-7),<sup>97</sup> CLECs raise issues about the proffered performance assurance plans.

### 2. Response

Based on the comments, both general and specific, about the performance assurance plans, the COPUC can only assume that the commentors are not familiar with the Colorado Performance Assurance Plan.<sup>98</sup> It is beyond question that the CPAP meets -- and exceeds by a wide margin -- the performance assurance plan requirements established in the *Bell Atlantic New York Order*<sup>99</sup> and recently reiterated in the *Verizon Maine Order*.<sup>100</sup> As we explained in our evaluation at pages 55-60, the Colorado PAP is substantially less tolerant of deficient performance than previously approved plans and contains numerous provisions and protections that assure it will grow, will change, and will be an effective mechanism into the foreseeable future.<sup>101</sup>

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<sup>97</sup> In its comments OneEighty expresses puzzlement over the meaning of certain provisions in the Colorado PAP. If OneEighty is interested in obtaining the COPUC's interpretation of its CPAP, it should direct its question to the COPUC and not to the FCC, which is in no position to answer.

<sup>98</sup> The COPUC did not adopt the Qwest Performance Assurance Plan (QPAP), either as initially proposed by Qwest or as subsequently modified as a result of the multi-state QPAP proceeding. Colorado conducted its own, independent proceeding. *See generally CPAP Procedural Order, Qwest Application*, App. K, Vol. 2, Tab 44, at pages 3-4. The Colorado Performance Assurance Plan is Exhibit K to the Colorado SGAT. *See Qwest Application*, App. B, Tab 13.

<sup>99</sup> *BANY Order* at ¶ 433.

<sup>100</sup> *Verizon Maine Order* at ¶ 63.

<sup>101</sup> We note that AT&T makes non-state-specific claims that the performance assurance plans are not comprehensive because they do not contain measures, *e.g.*, for service order accuracy and notices. AT&T comments at page 144. To the extent the omissions are the result of omissions in the ROC OSS metrics, as we have already discussed, CLECs should have made sure that metrics of interest to them were included in the ROC OSS test. Their failure to do so should not be used now to condemn the performance assurance plans that incorporate the agreed-to ROC OSS metrics. AT&T misses the point, however, when it argues that the PAPs are not comprehensive. The fact is that the Colorado PAP, at least, is a vibrant and robust mechanism that will change over time. If AT&T wishes to add or to change metrics, there is a process in place to accommodate that desire -- a fact that AT&T conveniently ignores in its comments.

We have reviewed the comments filed with this Commission. Nothing new is presented. The COPUC has seen no reason to change its recommendation.

D. A final observation

The scatter-gun approach used by the commentators in addressing the public interest, convenience, and necessity issue vividly demonstrates the need for a concise, articulated standard for review of the “public interest” in the § 271 context. In our review of the public interest, the COPUC equated the public interest with maximization of consumer and producer welfare.<sup>102</sup> In our view, consideration of any other factors serves only to obfuscate the issue and to complicate unnecessarily the analysis.

To continue the scatter-gun analogy, when the smoke clears, Qwest meets § 271 and granting its application is in the public interest.

## CONCLUSION

For the reasons set forth in our evaluation and in this reply, Qwest complies with the requirements of § 271(c) of the Act. We urge the Commission to so find.

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<sup>102</sup> See generally *Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 29.1, at pages 21-24; *Motion to Modify Volume 7 Order, Qwest Application*, App. C, Vol. 1, Tab 31.1, at pages 6-10.

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Short Citation	Full Citation
<b>COPUC Orders and Related Materials</b>	
<i>Commission Order (Decision No. C01-1302)</i>	Decision No. C01-1302, <i>Commission Order</i> , Docket No. 99A-577T (Mailed Date Dec. 21, 2001)
<i>COPUC Evaluation</i>	<i>In the Matter of Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota</i> , WC Docket No. 02-148, Evaluation of the Colorado Public Utilities Commission (July 2, 2002)
<i>COPUC Procedural Order</i>	Decision No. R00-612-I, <i>Procedural Order</i> , Docket No. 97I-198T (Mailed Date June 5, 2000)
<i>COPUC Staff's Volume 2 Report</i>	Colorado PUC Staff Report on Volume II Compliance Final Report, Docket No. 97I-198T (Dated October 17, 2001)
<i>COPUC Staff's Volume 3 Report</i>	Colorado PUC Staff Report on Volume III Compliance Final Report, Docket No. 97I-198T (Dated November 14, 2001)
<i>CPAP Order</i>	Decision No. C02-399, <i>Decision on Remand and Other Issues Pertaining to the Colorado Performance Assurance Plan</i> , Docket No. 01I-041T (Mailed Date April 10, 2002)
<i>CPAP Procedural Order</i>	Decision No. R01-272-I, <i>Procedural Order</i> , Docket No. 01I-041T (Mailed Date March 21, 2001)
<i>Decision on Applications for RRR (Decision No. C02-636).</i>	Decision No. C02-636, <i>Decisions on Application for Rehearing, Reargument, or Reconsideration</i> , Docket No. 99A-577T (Mailed Date June 6, 2002)
<i>Motion to Modify Volume 2A Order</i>	Decision No. R01-990-I, <i>Order Regarding Motions to Modify Decision Nos. R01-846 and R01-848</i> , Docket No. 97I-198T (Mailed Date Sept. 27, 2001)
<i>Motion to Modify Volume 4A Order</i>	Decision No. R01-990-I, <i>Order Regarding Motions to Modify Decisions No. R01-846 and R01-848</i> , Docket No. 97I-198T (Mailed Date Sept. 27, 2001)
<i>Motion to Modify Volume 5A Order</i>	Decision No. R01-1253-I, <i>Order Regarding Motions to Modify Decision No. R01-1141</i> , Docket No. 97I-198T (Mailed Date Dec. 7, 2001)
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	2002)
<i>Ruling on Applications for RRR (Decision No. C02-409).</i>	Decision No. C02-409, <i>Ruling on Applications for Rehearing, Reargument, or Reconsideration</i> , Docket No. 99A-577T (Mailed Date Apr. 17, 2002)
<i>Section 271 Compliance Order</i>	Decision No. C02-718, <i>Commission Decision Regarding OSS, Section 272, Public Interest, Track A, Change Management Process, and Data Reconciliation and Commission Decision Regarding the Commission's Recommendation to the Federal Communications Commission Concerning Qwest Corporation's Compliance with Section 271</i> , Docket No. 02M-260T (Mailed Date June 26, 2002)
<i>SGAT Compliance Order</i>	Decision No. C02-406, <i>Commission Decision Regarding Statement of Generally Available Terms and Conditions, Change Management Process Impasse Issue, and SGAT Compliance with § 271</i> , Docket No. 97I-198T (Mailed Date Apr. 11, 2002)
<i>Volume 2A Order</i>	Decision No. R01-848-I, <i>Resolution of Volume IIA Impasse Issues</i> , Docket No. 97I-198T (Mailed Date Aug. 17, 2001)
<i>Volume 3A Order</i>	Decision No. R01-1015-I, <i>Volume IIIA Impasse Issues</i> , Docket No. 97I-198T (Mailed Date Sept. 27, 2001)
<i>Volume 4A Order</i>	Decision No. R01-846-I, <i>Volume IVA Impasse Issues Order</i> , Docket No. 97I-198T (Mailed Date Aug. 16, 2001)
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<i>BANY Order</i>	<i>In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York</i> , CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22,

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<i>BellSouth Georgia/Louisiana Order</i>	<i>In the Matter of Joint Application by BellSouth Corporation, et al, for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, Memorandum Opinion and Order, FCC 02-147 (rel. May 15, 2002)</i>
<i>New Services Order</i>	<i>In the Matter of Wisconsin Public Service Commission Order Directing Filing, Docket Bureau/CPD No. 00-01, Memorandum Opinion and Order, FCC 02-25 (rel. January 31, 2002)</i>
<i>Supplemental Order Clarification</i>	<i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order and Clarification, FCC 00-183 (rel. June 2, 2000)</i>
<i>SWBT Texas Order</i>	<i>In the Matter of Application by SBC Communications, Inc., et al, Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 (rel. June 30, 2000)</i>
<i>UNE Remand Order</i>	<i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999)</i>
<i>Verizon Maine Order</i>	<i>In the Matter of Application by Verizon New England Inc., et al, for Authorization to Provide In-Region, InterLATA Services in Maine, CC Docket No. 02-61, Memorandum Opinion and Order, FCC 02-187 (rel. June 19, 2002)</i>
<i>Verizon Massachusetts Order</i>	<i>In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (rel. April 16, 2001)</i>
<i>Verizon Rhode Island Order</i>	<i>In the Matter of Application by Verizon New England, et al, for Authorization to Provide In-Region, InterLATA Services in Rhode Island, CC Docket No. 01-324, Memorandum Opinion and Order, FCC 02-63 (rel. Feb. 22, 2002)</i>

<b>Qwest Application and Related Materials</b>	
<i>DOJ Evaluation</i>	Evaluation of the United States Department of Justice, <i>In the Matter of Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota</i> , WC Docket No. 02-148, (July 23, 2000)
<i>KPMG Final Report</i>	<i>Qwest Communications OSS Evaluation</i> , Final Report, KPMG Consulting (submitted May 28, 2002)
<i>Qwest Application</i>	Brief of Qwest Communications International Inc. in Support of Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota, <i>In the Matter of Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota</i> , WC Docket No. 02-148 (June 13, 2002)